

The forgoing Amendment is submitted in response to a telephone conference between the undersigned and Examiner Sheikh who authored the Final Office Action. The telephone conference took place on May 6, 2008.

The undersigned initiated the telephone conference after having read the Final Office Action. Prior to the issuance of the Final Office Action, the undersigned had telephone conferences with the previous Examiner, Simon Oh, most recently on January 8, 2008. During that telephone conference, Examiner Oh and the undersigned discussed the Amendment filed December 20, 2007 in which Claim 3 was amended to cancel the term "flowable" and the term "loose bulk". Arguments were presented as to why incorporation of the density limitation into Claim 3 clearly distinguished over Winston (US Patent No. 4,623,536).

In the January 8, 2008 telephone conference, Examiner Oh suggested that the density limitation be removed from Claim 3 and the viscosity limitation of Claim 13 be inserted into Claim 3. Examiner Oh indicated that Claim 3 as thus amended would likely receive favorable consideration.

The undersigned called the Assignee of the Applicant to obtain authorization to amend Claim 3 in this manner. Authorization was given, and on January 9, 2008, the undersigned called Examiner Oh to indicate that the proposed amendment to Claim 3 was acceptable. Examiner Oh indicated that he had to speak to his Supervisor once again before confirming that the case was in condition for Allowance.

Accordingly, the undersigned's understanding of this case as of January 9, 2008 was that Claim 3 was amended to remove the density limitation, and to insert the viscosity limitation of Claim 13, and that such amended claim would likely be allowable. Examiner Oh indicated that he would call the undersigned as soon as he had an opportunity to speak to his Supervisor. Despite the undersigned calling Examiner Oh subsequent to January 9, 2008, the undersigned had no further conversations with Examiner Oh and was unaware that Examiner Oh was leaving the U.S. Patent and Trademark Office.

It was not until shortly after April 16, 2008 that Applicant learned of the issuance of a Final Office Action by the current Examiner (Examiner Sheikh) and that an Office Action had been issued based on the version of Claim 3 that existed prior to the undersigned's telephone conversations with Examiner Oh.

The undersigned called Examiner Sheikh on May 5, 2008 (Examiner Sheikh returned the call on May 6, 2008) to discuss the Final Office Action and explained in detail the circumstances of prosecution prior to her taking over this case. Examiner Sheikh suggested that Applicant file an amendment, making the change as originally agreed to by Examiner Oh, for further consideration at this time, as confirmed in the Examiner-initiated Interview Summary dated May 6, 2008. In addition, Examiner Sheikh indicated that the Application with the current Amendment would likely be favorably

considered, but if not, a request to withdraw the finality of the Final Office Action would be given favorable consideration.

Accordingly, Applicants have amended Claim 3 to add the limitation of former Claim 13, and particularly to require the slurry to have a viscosity of less than about 1000cP. Claim 3 is also amended to remove the density limitation, which has now been placed in a new dependent claim (Claim 26). Entry of the Amendment under the present circumstances is deemed proper and is respectfully requested.

Applicants gratefully acknowledge the withdrawal of the rejection of Claims 3-16 and 23-25 under 35 USC 112, second paragraph.

The same claims have been rejected over Winston (US Patent No. 4,623,536). The Office Action states that Winston teaches a toothpaste composition containing sodium bicarbonate particles having a particle size of less than 25 microns. The Office Action acknowledges that the reference is silent with respect to surface area, bulk density and Zeta potential. Nonetheless, it stated that patentability cannot be imparted to claims through the recitation of such functional language without proof of unexpected results that arise therefrom. It is further stated that method of use Claims 14-16 are not patentable, as Claim 3 has been shown to be obvious in view of the prior art. The rejection is hereby traversed and reconsideration is respectfully requested.

In the telephone conferences between the undersigned and Examiner Oh, as discussed above, it was pointed out (and Examiner Oh agreed) that the viscosity limitation now provided in Claim 3 is neither taught nor suggested in the Winston reference. Applicants have also pointed out that the present invention is a slurry containing a substantial portion of spherical alkali metal bicarbonate particles, in which the particles have a certain median particle size and a certain surface area. The particles are dispersed in a liquid medium to form a slurry having certain characteristics, as described above. The slurry is stable and is prepared in the absence of a suspending aide.

The problem with prior art slurries is lack of stability. In particular, prior art slurries typically result in the formation of distinct layers of the particles and the liquid medium after only a few minutes. These prior art slurries, therefore, require the presence of a suspending aid to promote stability. The presence of a suspending aide increases the cost of producing such slurries. In addition, the presence of a suspending aid increases the likelihood of interaction between the components of the slurries. In some cases, the presence of a suspending aid is detrimental, or prohibited by the end use of the product (present Application, paragraph bridging pages one and two).

The present Application further states that the solubility of prior art alkali metal bicarbonate particles falls off as temperature decreases. When an alkali metal bicarbonate slurry is formed, the addition of more water demonstrates a reduction in the solubility of the particles. This decreased solubility is apparent particularly at

temperatures below 25° C. Thus, time and fuel must be used to increase the temperature in order to facilitate the dissolution of the particles. When the dilutions are used as a dialyzate, both the cost and time of medical treatment is increased (present Application page 2, first full paragraph).

Thus, the present invention is an alkali metal bicarbonate particle-containing slurry, which is stable in the absence of a suspending aid. In addition, as explained in the second full paragraph on page 5 of the Application, the slurry is not affected by temperature reduction, so that the present invention slurry may be utilized at lower temperatures, making them more economical, convenient, and efficient than prior art dilutions, which are adversely affected by changes in temperature.

Winston discloses a sodium bicarbonate-containing toothpaste that is employed as the sole abrasive agent. The problem addressed in Winston is that high levels of conventional bicarbonate abrasives in toothpaste formulations impart excessively high viscosities, and prevent mixing during manufacturing.(column 2, lines 11-13). The solution to the problem is to provide a toothpaste formulation containing sodium bicarbonate as the sole abrasive material, in an amount of at least 60% by weight, with at least about 30% by weight having a particle size less than 25 microns (column 3, lines 3-8).

The toothpaste formulation, in addition to sodium bicarbonate also includes a humectant and a thickener (column 3, line 63 through column 4, line 11).

Particularly, preferred components of the referenced toothpaste composition are shown in the Table at the bottom of column 5.

The viscosity limitation set forth in the present claims, and as discussed with Examiner Oh, clearly distinguishes the claimed invention from what is fairly disclosed in Winston. The present invention is at the outset directed to a slurry, which is a flowable mixture of components. The viscosity limitation provided in the present claims is consistent with the present invention as a slurry.

Winston is clearly not directed to a slurry, as a slurry is expected to flow, even out of a relatively narrow orifice, as typically found in a tube housing a toothpaste. Indeed, it would be highly undesirable for a toothpaste to routinely flow out of a tube merely by tipping the tube. Quite to the contrary, toothpastes dispensed from tubes are formulated not to flow, so that the only way that they can be dispensed is to exert pressure to force the contents through the orifice. In addition, when a toothpaste is placed on a toothbrush, it remains there until the user brushes his or her teeth. If the reference composition were flowable, as in a slurry, it would not function as an acceptable toothpaste.

Thus, in order to arrive at the claimed invention (a slurry) one of ordinary skill in the art would have to dispense with the reference toothpaste formulation to create a slurry, which would be counter-indicated in the toothpaste art. The law does

not support an obviousness rejection when the disclosure of the prior art must be changed so dramatically, and particularly where the change is counterindicated.

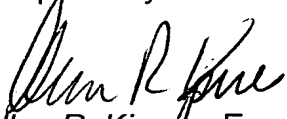
It is therefore submitted that the understanding reached by the undersigned and Examiner Oh in the telephone conferences of January 8-January 9, 2008, agreeing to add the viscosity limitation to Claim 3 and the withdrawal of the density limitation, clearly distinguishes the claimed invention from the prior art, and particularly the Winston reference.

In view of the foregoing, Applicant submits that the present Application is condition for allowance, and early passage to issue is therefore deemed proper and is respectfully requested.

If the Examiner should consider Claim 3 not patentable over the prior art, the finality of the rejection set forth in the present Office Action should be withdrawn for the reasons discussed above.

If the Examiner wishes to discuss the Amendment, or requires any further information, the undersigned is available as indicated below.

Respectfully submitted,

  
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